



# Georgia Department of Motor Vehicle Safety

2206 East View Parkway • Conyers, Georgia 30013 • 678.413.8650

Sonny Perdue  
Governor

Neal B. Childers  
Commissioner

July 3, 2003

Docket Management Facility  
U.S. Department of Transportation  
Room PL-401  
400 Seventh Street, SW  
Washington, DC 20590-0001

2003 JUL -7 A 10:05  
DEPT OF TRANSPORTATION  
DOCKET

Re: Docket FMCSA-2001-11117  
Docket TSA-2003-14610

This letter responds to the Interim Final Rules published under the above Dockets in the May 5, 2003 *Federal Register*. The Georgia Department of Motor Vehicle Safety (hereinafter referred to as "Department" or "DMVS") is the State agency with responsibility for issuing driver's licenses, and is also the State Lead Agency for the Motor Carrier Safety Assistance Program (MCSAP). These comments represent our preliminary evaluation of the Interim Final Rules, and we reserve the right to submit updated comments as issues arise or more information becomes available.

Department staff have participated in several in-house meetings, as well as telephone conference calls hosted by the American Association of Motor Vehicle Administrators (AAMVA) and Commercial Vehicle Safety Alliance (CVSA). In addition, Georgia hosted the Region II AAMVA Conference, which concluded on June 26, 2003, where the final rules were a topic of many discussions.

The Department has several concerns about the Interim Final Rules, the ability of the State and Federal Government to implement the rules' requirements in the time frames given, many of the unanswered questions about procedures, and the huge unfunded mandates expressed or implied in the rules.

**49 CFR Part 383, Subpart I.** Paragraph(c) of the new §383.141 requires that the state notify the holder of a hazardous materials endorsement of the Transportation Security Administration (TSA) security screening that the holder must pass to retain their Hazardous Materials endorsement. The rule requires a 180-day notification, which, in the worst case, could be interpreted to mean the May 5 issue date of the rules.

While we must begin complying with and implementing this requirement, neither TSA nor the Federal Motor Carrier Safety Administration (FMCSA) representatives who participated in the conference calls could tell us the procedure we have to follow to submit the driver's information to the Federal Government, making it impossible for DMVS to provide accurate information to Georgia CDL Holders and their employers.

The Georgia DMVS currently mails advance expiration notices to ALL Georgia license holders to allow them to take advantage of renewal by mail or over the Internet. We now experience a 22% undeliverable return rate of those notices. Therefore, we could expect that almost one-fourth of all "H"-endorsed CDL holders would not receive the notice.

We feel strongly that employers of CDL drivers are in the best position to notify their employees of these requirements, and that trying to reach only individual drivers will result in numerous drivers who do not receive notification. FMCSA and TSA should consider requiring employers of "H"-endorsed CDL's to notify their employees affected by these rules. Georgia DMVS will incur an unfunded cost of almost \$100,000 simply to mail the required notices.

**Legislative Constraints.** Georgia law does not allow the Department to revoke or cancel only an endorsement to a driver's license. Our Legislature meets once each year for 40 legislative days, generally beginning the first or second full week in January. Under the best circumstances, even on a "fast track," legislation will not pass out for the Governor's signature before late February. Other legislative refinements may also be needed (e.g., allowing the Department to collect fingerprinting fees). In addition, DMVS has taken a 15% budget *reduction* due to falling state revenues. There is simply **no** money in our State Budget to implement a whole new process for CDL holders, and the earliest possible date for funds is July 1, 2004; however, given the current economy, and State requirements for submitting budget requests, July 1, 2005 is more likely.

**Administrative Constraints.** We currently have no way to suspend or revoke only an endorsement to a CDL. In theory, we could cancel an entire license, and re-issue only a Class C Regular license permitting passenger car operation only. However, this method is fraught with potential mines, as it (1) removes the driver entirely from the category of CDL holder, not just the endorsement, and (2) invokes a mandatory administrative appeal process in which DMVS must defend its cancellation action, something arguably not justifiable when the intent is to remove only the "H" endorsement. We expect that our Administrative, State, and Superior court judges would take a dim view of these actions.

**Information Technology Constraints.** As we said above, we have no way to suspend or revoke only an endorsement to a CDL, and our Driver's License system is not equipped to deal with these issues either. Even if we revoked the entire CDL, and then re-issued the CDL without the "H" endorsement, we have no current method to block the later re-issue of the "H" endorsement. To do so will require programming, similar to the programming necessary to collect Social Security Numbers to deal with child-support enforcement.

In addition, DMVS has a number of substantial Information Technology projects under way. The Final Rules place yet another unfunded burden on already strained resources.

**Fingerprints.** The rule allows an individual to submit fingerprints beginning with the May 5 date, and requires fingerprint submission beginning November 3, "in the form and manner specified by TSA." Yet TSA has not provided this form and manner in the rule, nor in subsequent communication.

Fingerprint collection is not a simple process. Rolling a classifiable set of prints takes skill and practice, and can confound even experienced printers. With traditional fingerprint cards, it may be several weeks or months before the FBI tells the submitting agency if the prints were even classifiable. If not, the applicant must be reprinted, resulting in further delays. The rule also does not address how to deal with individuals with missing or otherwise unprintable fingers.

Georgia has approximately 90,000 active CDL holders with an “H” endorsement. In a four-year renewal cycle, we will see approximately 2,000 – 2,500 CDL holders each month that will need fingerprinting. Our driver’s license Customer Service Centers are not set up to take full fingerprint sets from individuals, and we do not have trained personnel at any of the Centers. If even five percent of the cards come back as not classifiable, that results in 125 individuals *each month* we must contact, locate, and have return for reprinting.

We must also implement a system that insures the person submitting the fingerprints is truly the person applying for the Hazardous Materials endorsement. Without positive assurance, the whole concept of the background check is meaningless. This means that the Department *must* collect the fingerprints when the applicants present themselves for renewal.

**Unfunded Mandate.** In the weeks since the publication of the Final Rules, it has become more and more apparent that an electronic means to gather and transmit fingerprints must become the standard. To do this will require a fingerprint kiosk at each Customer Service Center, a trained, experienced license examiner, and space for the equipment, operator, and to provide for reasonable privacy for the applicant.

Georgia currently has 56 Customer Service Centers throughout the State where CDL holders can renew their license. To maintain our level of customer service, we would have to dedicate an average of one examiner to CDL renewals at each location. 56 examiners in the first year would cost \$1,801,800, and that cost would escalate each year as salaries and benefit costs increase. Purchasing electronic fingerprinting systems would cost approximately \$1,680,000 plus another \$336,000 in initial set-up costs. Floor space would cost up to \$98,000 each year for the facilities. In addition, maintenance and repair of the electronic systems would result in recurring costs, as would the cost of data infrastructure and recurring data transmission costs.

Even without the electronic equipment, we would have to devote the examiners and the space to dealing with “H”-endorsed CDL holders. We would also still have to acquire manual fingerprinting equipment and supplies.

**Other procedural issues.** The Final Rules, and subsequent communications, do not tell the States the manner in which applications from the States, as well as clearances and denials to the States will be transmitted. Discussions have focused on using the Commercial Driver’s License Information System (CDLIS) as part of this process. However, our information is that there are no pending modifications to CDLIS. CDLIS currently carries only text information. Attempting to append CDLIS to carry images (fingerprints or photos) will require extensive modifications, and could well destroy the current utility of CDLIS in a field environment which depends on dial-up or low-capacity radio systems.

If applications and fingerprints must go by mail, we have no guidance on where to send the information, and there is no system to acknowledge receipt of the application by Federal agencies. Currently, fingerprints go through a state clearinghouse in each state (in Georgia, this is the Georgia Bureau of Investigation), and one set is forwarded to the FBI. This system, while

somewhat cumbersome, is well understood by law enforcement agencies. Any variation from this system would only create confusion. On the other hand, State clearinghouses may not be equipped to deal with thousands of extra fingerprint requests each month.

The rule mandates that the States require renewal of the “H” endorsement at least every five years (§383.141(d)). Georgia already meets this requirement with its four-year renewal cycle. However, the rule is silent on how a State should approach the issue if it becomes aware of a disqualifying conviction in the middle of a renewal cycle. Worse, we have no information whether the FBI would “flag” CDL holder’s records to indicate that TSA, FMCSA, and/or the issuing State should a disqualifying conviction occur during the mandated five-year period.

**State information vs. Federal information.** The rule does not appear to require that States check their own criminal data systems to look for disqualifying offenses. The rule also does not require that if a State chooses to do so, that the information be shared with the Federal agencies.

Our own experience indicates that extensive data gaps exist here. While we loathe recommending an additional requirement placing a greater unfunded burden on the States, not requiring a concurrent State criminal records check and sharing of those results would be imprudent.

In fact, it is not clear from the rule whether the States are even authorized to perform their own background investigation. To do the level of investigation needed to disclose some of the disqualifying offenses will require Legislative action in Georgia, as well as possible Administrative rulemaking by the Georgia Crime Information Center Council.

**Constitutional issues.** 49 CFR §1572.5(c) raises questions of due process and equal protection because of the way it treats drivers in similar circumstances. Drivers who “fail” the initial threat assessment must have their hazardous materials endorsement revoked immediately, while a driver who has a pending threat assessment can get an extension. In addition, drivers subjected to the “full” background check under 49 CFR §1572.141 have an appeal process that can stay revocation actions during the appeal.

**Small Business Impact.** Drivers who apply for the Hazardous Materials endorsement for the first time cannot get the endorsement until the full TSA threat assessment process is complete. Our enforcement officers find drivers on a daily basis transporting hazardous materials that require the endorsement, who do not even have a CDL of any kind. Many of these are small (even one-person) businesses that are genuinely ignorant of the CDL requirements.

Ever since the advent of the Commercial Drivers License program, and the Motor Carrier Safety Assistance Program before it, our parent agencies and we have engaged in extensive outreach, education, and enforcement efforts to inform people of these requirements. The fact is that even after 20 years of virtually full adoption of the Federal Motor Carrier Safety Regulations and over a decade of the CDL program, many people (usually small businessmen) throughout the United States fail to understand the very broad applicability of these requirements.

The additional impact of these rules will be to make compliance more difficult. This will result in greater economic hardship for small businesses, as well as lead to greater non-compliance with a host of beneficial safety and hazardous materials regulations, driving these businessmen underground.